Adrik bin Mohd Ramli v Woo Swee Mee & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S5–22–936 OF 2005
HARMINDAR SINGH JC
3 JUNE 2010

Evidence — Documentary evidence — Sufficiency of evidence — Whether first defendant able to establish case

Land Law — Ownership — Claim for — Subject property transferred to plaintiff's name — Whether plaintiff held property in trust for first defendant — Whether first defendant beneficial owner of property — Whether first defendant holding property on trust for deceased — Whether plaintiff's signature on Form 14A forced or induced by coercion or duress or undue influence

Tort — Defamation — Defences — Absolute privilege — Whether imputations contained in affidavit could support claim in defamation

The subject matter of the dispute of the instant suit is a building situated in Klang known as the 13A property. This property was transferred into the name of Woo Swee Mee ('the first defendant') by one Lai Yoke Chee ('the deceased'). According to the first defendant the deceased who had borrowed a sum of RM225,000 from her had decided to sell the 13A property to her at the sale price of RM250,000. The first defendant also averred that it was agreed that upon signing the sale and purchase agreement the first defendant would pay a sum of RM25,000 and that the balance of the purchase price would be set-off against the monies that she had given the deceased. In support thereof the first defendant relied upon the deceased's letter to his solicitors confirming that he had received the balance of the purchase price amounting to RM225,000 from the first defendant. The said property was then registered in the first defendant's name and she decided to use it as a centre to teach English. Thereafter the first defendant learned that if she could show strong bumiputra participation she could obtain her licence to operate the centre from the Ministry of Education. With this in mind she decided to transfer the 13A property to the plaintiff, who had been working for the deceased for a total period of 32 years, as trustee. The plaintiff allegedly agreed to this arrangement and even signed undated documents to transfer the property back to the first defendant. After the deceased's death, the first defendant contacted the plaintiff and asked him to accompany her to a lawyer's office to transfer the 13A property which he was holding on trust for her to her nominee the second

defendant company. The third and fourth defendants who are the first defendant's sisters were the directors of the second defendant company while the fifth defendant was the first defendant's husband. The plaintiff signed the transfer documents but the events that led to the signing of the documents were disputed. The defendant's version was that she had visited the seventh defendant, a solicitor, upon the recommendation of the sixth defendant, a solicitor who occupied the same building but did not do conveyancing work. According to the seventh defendant solicitor, the first defendant had informed him that the plaintiff was holding the property on trust for her and that she now wanted the property transferred back to her, which was confirmed by the first defendant. The completed Form 14A with the plaintiff's particulars was thereafter signed by the plaintiff as transferor, by the third and fourth defendants as transferees and by the seventh defendant as the witness. The seventh defendant testified that throughout the whole process the plaintiff was aware of what was happening and that there was no threat or pressure used by anyone to procure his signature on the completed Form 14A. However, the plaintiff later lodged a caveat preventing the registration of the 13A property in the name of the second defendant and commenced the present action wherein he claimed, inter alia, a declaration that the Form 14A was null and void and of no effect on the grounds that he was coerced into signing it or that there was undue influence exercised over him by the defendants. It was the plaintiff's contention that the first defendant was holding the 13A property on trust for the deceased and that he had been confined and harassed by the first, third, fourth and fifth defendants to sign a blank Form14A. The plaintiff also sought an injunction to restrain the defendants and their servants and agents from interfering with his right of ownership and possession of the 13A property. The defendants counterclaimed for an order that the Form 14A be given effect and that the caveat lodged by the plaintiff be removed and also for damages for defamation.

Held, dismissing the plaintiff's claim and allowing the first part of the defendants' counterclaim with costs:

(1) From the plaintiff there was merely a bare assertion of what he claimed the deceased told him but as against this are documents adduced by the defendants which provide evidence of the purchase of the 13A property. The first defendant produced documentary evidence to show that the deceased had acknowledged payment of the deposit of RM25,000 and there was also a letter from the deceased to his solicitor confirming that he had received the balance of the purchase price from the first defendant. In addition the plaintiff had also signed undated documents to transfer the 13A property back to the first defendant. In the face of such documentary evidence the bare oral assertions of the plaintiff had to be rejected (see paras 22–23).

(2) The first defendant as the beneficial owner was able to transfer the property on trust to the plaintiff for the reasons she had given because a trust could be implied even where the agreement itself did not contain an express clause to this effect. As such the plaintiff was holding the 13A property as trustee for the first defendant (see paras 24–25).

(3) Even going by the plaintiff's version of the events, there was no act or threatened act which violated the Penal Code and his allegation of coercion must thus fail. Further, since he knew, by his own admission, that he was holding the 13A property on trust to be returned one day, there could not have been undue influence on the plaintiff. In the circumstances the plaintiff's claim seemed very much as an afterthought influenced by the deceased's family (see paras 28 & 30–31).

(4) Given that it was the intention of the parties that the 13A property be transferred in the manner stated in the said Form 14A, and given that the law did not prohibit such an agreement, the land authorities must give effect to such intention. Thus the Form 14A was an instrument fit for registration (see para 39).

(5) Although the plaintiff claimed that a deception had been practised on the public administration because of the transactions between the plaintiff and the first defendant it could not be denied that the plaintiff was an equal participant in these transactions. In any case, if the trusts were struck down on such grounds then the net result would be the first defendant being declared a beneficial owner (see paras 42–43).

(6) The defendants were entitled to the first part of the counterclaim for the Form 14A to be given effect and the caveat entered by the plaintiff to be removed but the second part which was a claim in defamation could not stand. The imputations relied upon as giving rise to the claim in defamation, were all contained in an affidavit which was protected by absolute privilege and thus the claim was without any merit (see paras 46–47).

[Bahasa Malaysia summary

Hal perkara yang menjadi pertikaian dalam guaman ini ialah sebuah bangunan terletak di Klang yang dikenali sebagai hartanah 13A. Hartanah ini dipindah milik kepada Woo Swee Mee ('defendan pertama') oleh Lai Yoke Chee ('si mati'). Menurut defendan pertama, si mati yang telah meminjam sejumlah RM225,000 daripadanya telah berkeputusan menjual hartanah 13A kepadanya pada harga jualan RM250,000. Defendan pertama juga menegaskan bahawa telah dipersetujui bahawa apabila menandatangani perjanjian jual beli, defendan pertama akan membayar sejumlah RM25,000 dan baki harga jualan akan ditolak daripada wang yang telah dia berikan

kepada si mati. Bagi menyokong perkara tersebut, defendan pertama bergantung kepada surat si mati kepada peguam caranya mengesahkan bahawa dia telah menerima baki harga belian berjumlah RM225,000 daripada defendan pertama. Hartanah tersebut kemudiannya didaftarkan atas nama defendan pertama dan dia memutuskan untuk menjadikannya pusat mengajar Bahasa Inggeris. Kemudian, defendan pertama mendapat tahu bahawa jika dia boleh menunjukkan penglibatan bumiputera yang ramai, dia boleh mendapat lesen untuk menjalankan pusat tersebut daripada Kementerian Pelajaran. Justeru dia memutuskan untuk memindah milik hartanah 13A kepada plaintif, yang telah bekerja dengan si mati selama 32 tahun, sebagai pemegang amanah. Plaintif dikatakan bersetuju dengan hal demikian dan malah telah menandatangani dokumen-dokumen tanpa tarikh untuk memindah milik hartanah tersebut kepada defendan pertama. Setelah kematian si mati, defendan pertama menghubungi plaintif dan memintanya bersama-sama ke pejabat peguam untuk memindah milik hartanah 13A tersebut yang mana dipegang sebagai amanah bagi pihak defendan pertama kepada penama defendan pertama iaitu defendan kedua. Defendan-defendan ketiga dan keempat yang merupakan saudara perempuan defendan pertama merupakan pengarah-pengarah defendan kedua, sementara defendan kelima merupakan suami defendan pertama. Plaintif menandatangani dokumen-dokumen pindah milik tetapi kejadian-kejadian yang menjurus kepada penandatanganan dokumen-dokumen tersebut dipertikaikan. Versi defendan-defendan adalah bahawa dia menemui defendan ketujuh, seorang peguamcara, atas saranan defendan keenam, seorang peguamcara di bangunan yang sama tetapi tidak menjalankan kerja-kerja cara pindah hak. Menurut peguamcara defendan ketujuh, defendan pertama telah memberitahunya bahawa plaintif memegang hartanah tersebut sebagai amanah bagi pihaknya dan sekarang dia mahukan hartanah tersebut dipindah milik semula kepadanya, yang mana disahkan oleh defendan pertama. Borang 14A yang sempurna dengan butiran plaintif kemudiannya ditandatangani oleh plaintif sebagai pemindah milik, oleh defendan-defendan ketiga dan keempat sebagai penerima-penerima pindahan milikan dan oleh defendan ketujuh sebagai saksi. Defendan ketujuh memberi keterangan bahawa sepanjang keseluruhan proses plaintif sedia maklum apa yang berlaku dan tiada ugutan atau desakan oleh sesiapapun untuk mendapatkan tandatangannya atas Borang 14A yang lengkap itu. Walau bagaimanapun, plaintif kemudiannya memasukkan kaveat menghalang pendaftaran hartanah 13A tersebut atas nama defendan kedua dan memulakan tindakan ini yang mana dia mendakwa, antara lain, suatu perisytiharan bahawa Borang 14A tersebut adalah batal dan tak sah dan tiada kesan atas alasan bahawa dia dipaksa menandatanganinya atau terdapat pengaruh tak wajar ke atasnya oleh defendan-defendan. Plaintif berhujah bahawa defendan pertama yang memegang hartanah 13A tersebut sebagai amanah bagi si mati dan bahawa dia telah dikurung dan dikasari oleh defendan-defendan pertama, ketiga, keempat dan kelima untuk menandatangani Borang 14A yang kosong. Plaintif juga memohon injunksi

A B C D E F G H I

untuk menghalang defendan-defendan dan pengkhidmat-pengkhidmat dan ejen-ejennya daripada mengganggu hak milikan dan kepunyaan hartanah 13A tersebut. Defendan-defendan menuntut balas suatu perintah bahawa Borang 14A dikuatkuasakan dan kaveat yang dimasukkan oleh plaintif dipotong dan juga ganti rugi untuk fitnah.

Diputuskan, menolak tuntutan plaintif dan membenarkan bahagian pertama tuntutan balas defendan-defendan dengan kos:

(1) Daripada plaintif, hanya terdapat penegasan semata-mata tentang apa yang dia dakwa si mati telah memberitahunya tetapi bertentangan dengan hal ini, terdapat dokumen-dokumen dikemukakan oleh defendan-defendan yang memperuntukkan keterangan pembelian hartanah 13A tersebut. Defendan pertama mengemukakan keterangan dokumentar menunjukkan bahawa si mati sedia maklum tentang pembayaran deposit RM25,000 dan juga terdapat sepucuk surat daripada si mati kepada peguamcaranya mengesahkan bahawa dia telah menerima baki harga belian daripada defendan pertama. Selanjutnya, plaintif juga menandatangani dokumen-dokumen tidak bertarikh untuk memindah milik kembali hartanah 13A kepada defendan pertama. Pada zahir keterangan dokumentar sebegitu, penegasan lisan plaintif semata-mata harus ditolak (lihat perenggan 22–23).

(2) Defendan pertama sebagai pemilik benefisial boleh memindah milik hartanah yang dipegang sebagai amanah kepada plaintif atas sebab-sebab yang telah diberikannya kerana amanah boleh dianggapkan walaupun perjanjian tersebut tidak mengandungi klausa nyata berkenaan hal ini. Oleh itu, plaintif memegang hartanah 13A sebagai pemegang amanah bagi defendan pertama (lihat perenggan 24–25).

(3) Walaupun dengan mengikut versi plaintif berkenaan berlakunya peristiwa tersebut, tiada perbuatan atau perbuatan mengugut yang menyalahi Kanun Keseksaan dan dakwaan paksaan gagal. Selanjutnya, memandangkan dia tahu, atas pengakuannya sendiri, bahawa dia memegang hartanah 13A sebagai amanah untuk dikembalikan pada suatu hari nanti, tidak mungkin ada pengaruh tak wajar ke atas plaintif. Dalam keadaan tersebut, dakwaan plaintif kelihatannya seperti sesuatu yang difikirkan kemudian yang dipengaruhi oleh keluarga si mati (lihat perenggan 28 & 30–31).

(4) Adalah menjadi niat pihak-pihak bahawa hartanah 13A dipindah milik seperti yang telah dinyatakan dalam Borang 14A, dan juga bahawa undang-undang tidak menghalang perjanjian sebegitu, pihak

pentadbiran tanah mestilah menunaikan niat itu. Oleh itu, Borang 14A merupakan suratcara yang sesuai untuk pendaftaran (lihat perenggan 39).

(5) Walaupun plaintif mendakwa bahawa penipuan telah berlaku di pihak pentadbiran awam disebabkan urus niaga antara plaintif dan defendan pertama, tidak dapat dinafikan bahawa plaintif merupakan penyumbang yang sama rata dalam urus niaga tersebut. Dalam apa-apa keadaan pun, jika amanah tersebut dibatalkan atas dasar-dasar tersebut maka kesannya ialah defendan pertama diisytiharkan sebagai pemilik benefisial (lihat perenggan 42–43).

(6) Defendan-defendan berhak ke atas bahagian pertama tuntutan balas bagi Borang 14A tersebut diberi kesan dan kaveat yang dimasukkan plaintif dipotong tetapi bahagian kedua, iaitu tuntutan fitnah tidak dapat dipertahankan. Tohmahan-tohmahan yang digunapakai yang membangkitkan tuntutan fitnah, semuanya terkandung dalam suatu afidavit yang dilindungi oleh perlindungan mutlak, maka tuntutan tersebut langsung tiada merit (lihat perenggan 46–47).]

Notes

For cases on claim for ownership in land, see 8(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 3542–3545.

For cases on defences for defamation, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 308–319.

For cases on documentary evidence in general, see 7(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 1187–1385.

Cases referred to

Coopers & Lybrand v Singapore Society of Accountants & Ors [1988] 3 MLJ 134, HC (refd)

Fusing Construction Sdn Bhd v EON Finance Bhd & Ors [2000] 3 MLJ 95, CA (refd)

Geh Cheng Hooi & Ors v Equipment Dynamics Sdn Bhd and other appeals [1991] 1 MLJ 293, SC (refd)

Holman v Johnson (1775) 98 ER 1120 (refd)

Kim Guan & Co Sdn Bhd v Yong Nyee Fan & Sons Sdn Bhd [1983] 2 MLJ 8, PC (refd)

Palaniappa Chettiar v Arunasalam Chettiar [1962] MLJ 143, PC (refd)

Perlis Plantations Bhd v Mohammad Abdullah Ang & another case [1988] 2 CLJ (Rep) 134, HC (refd)

Suntoso Jacob v Kong Miao Ming [1986] 2 MLJ 170, CA (refd)

Legislation referred to

Contracts Act 1950 ss 10, 14, 15, 16, 16(2), (3)

Defamation Act 1957 s 11

National Land Code ss 301, 301(b)(ii), (c), 344, Form 14A
Penal Code
Stamp Act 1949 ss 50, 301(d),
Stamp Ordinance 1949

Jasvinjit Singh (AJ Ariffin, Yeo & Harpal) for the plaintiff.
Mark Foong (Rejinder Singh with him) (Mark Foong & Co) for the defendants.

Harmindar Singh JC:

[1] This case concerns a dispute as to property. Sometime in 1985, one Lai Yoke Chee, now deceased, purchased a 3/36 share in the piece of property held under Geran Mukim No 1793, Lot No 17503, Daerah Klang, Selangor and over the years constructed three buildings on the said portions which came to be known as 8B, 9B and 13A properties.

[2] The 8B property was registered in the name of Lai Yoke Chee's ('deceased') wife and the 9B property was registered in the name of his son who in turn transferred the same to his three sisters. These properties are also the subject matter of another suit.

[3] The other portion, known as the 13A property is the subject matter of the instant suit. This property was transferred into the name of the first defendant by the deceased. The first defendant then transferred it to the plaintiff who had been working for the deceased for a long time and was the caretaker of the 8B and 9B properties. The first defendant claimed that the plaintiff was holding the property on trust for her. On 26 March 2005, the first defendant directed the plaintiff to transfer the 13A property to her nominee, the second defendant. The defendant then attended at the office of the seventh defendant, an advocate and solicitor, and signed the transfer document, Form 14A. The plaintiff, however, then lodged a caveat preventing the registration of the 13A property in the name of the second defendant.

[4] The plaintiff is now claiming, inter alia, for a declaration that the Form 14A is null and void and of no effect and that it be destroyed by the court. He is also seeking an injunction restraining the defendants, and their servants and agents, from interfering with the plaintiff's right of ownership and possession of the 13A property.

[5] The plaintiff is claiming that the declaration ought to be granted from the following reasons:

(a) that the plaintiff was coerced into signing the said Form 14A or that there was undue influence excused over him;

(b) that the Form 14A was a void or voidable instrument as it was a sham document and tantamount to a deception on the registration of titles and the inlaw revenue board; and

(c) that there was no such trust in existence in the first place.

[6] There are also other claims against the defendants which I will come to later in the judgment. There is a counterclaim by the defendants for an order that the Form 14A to be given effect and that the caveat lodged by the plaintiff be removed. There is a claim in defamation in the counterclaim which I will deal with later.

THE FACTS

[7] The story unfolds from the time the deceased was alive and he had transferred property 13A to the first defendant. According to the plaintiff, the first defendant was holding the said property on trust for the deceased. Later in 2003, the deceased instructed the first defendant to transfer the said property to the plaintiff. The deceased told him to hold the property on trust for him and his family as well as a security for a retirement benefit for the plaintiff in view of his long service to the deceased and for moneys owed to him. The plaintiff also claimed somewhat incongruently that the property was transferred into his name as the first defendant was facing some financial difficulties. In order to avoid the property being seized, the property had to be transferred to him (plaintiff). The plaintiff therefore claimed that he has since been holding the property on trust for the deceased and upon his death in 2005, for the deceased's family.

[8] The first defendant, on the other hand, claimed that she had first started working for the deceased in 1979 when she was 22 years old. In 1981, she fell in love with the deceased who was at that time 44 years old and worked as a building contractor. The deceased was, however, married at the time to one Yong Mooi. In order not to be the cause of the breakdown in the deceased's marriage, she left for Hong Kong in 1987 to join her brother. In 1997, she returned to Kuala Lumpur to look after her sick mother. She also resumed her love relationship with the deceased and started to live together with him.

[9] Shortly afterwards, the deceased's business was greatly affected by the Asian financial crisis. The deceased was in dire need of money and facing bankruptcy. The first defendant had made some money from her property investments in Hong Kong. She helped him with her money from time to time. The deceased however insisted on repaying his debts. He did this by selling the 13A property to the first defendant to set-off his debts to her.

[10] The arrangement for this transaction, according to the first defendant, was as follows. The deceased had borrowed altogether a sum of RM225,000 from her. It was decided that the sale price of the said property would be RM250,000. She would pay a sum of RM25,000 upon signing the sale and purchase agreement and the balance would be set-off against the monies that she had given him. The documentation was prepared by M/s Paul Ong & Associates, advocates and solicitors. The deceased wrote a letter dated 17 November 2000 confirming to M/s Paul Ong & Associates that he had received the balance of the purchase price namely the sum of RM225,000. The said property was then registered in her name.

[11] After that, she decided to use the said building as a centre to teach English. To this end, she spent money to renovate the building. She formed a company called 'Born Free Study Centre Sdn Bhd'. The centre was called 'Pusat Bahasa Sri Indah' and later changed to 'Sri Indah International English Centre'. She applied to the Education Department for registration of the language centre. She encountered obstacles in getting her certificate. She was then advised by someone who had the necessary connections that she would have a better chance of obtaining her certificate if she could show strong bumiputra participation in her business. She then decided to allot some shares to the plaintiff in 'Born Free Study Centre Sdn Bhd' and he was also made a director.

[12] Significantly, in order to show strong bumiputra participation, she also transferred the said property 13A to the plaintiff but as trustee. The plaintiff agreed and even signed undated documents to transfer the property back to her. A consideration of RM180,000 was stated in the documents but no money was paid. The documents were also prepared by M/s Paul Ong & Associates. After having done all this, the first defendant managed to obtain her licence to run the centre from the Ministry of Education.

[13] Now everything appeared to go on without too much fuss until the deceased suddenly died on 8 March 2005. His death started a chain of events leading to the filing of several suits in court. The disputes were unsurprisingly between the wife of the deceased and her family and the first defendant. The death of the deceased had also put the plaintiff in a difficult situation. He had worked for the deceased for a total period of 32 years right up to the time the deceased died. Apparently he had worked for the deceased in various capacities from being the errand boy to a director in some of the deceased's companies. He must have had the complete trust of the deceased.

[14] Before he died, the deceased controlled a company called Indah Seputih Sdn Bhd. The said company came to own six units of shop houses for which the plaintiff was promised one of the units by the deceased as his retirement

benefit. Three units were held by the first defendant of which one unit was meant for the plaintiff. However, Indah Seputih Sdn Bhd managed to obtain a court order for the return of the said shop houses for which the first defendant has now filed an appeal to the Court of Appeal. The plaintiff was naturally concerned for his rights. He was also living in the property 9B which was controlled by the deceased's family and his only source of income came from them as he looked after their properties. The first defendant had also filed another suit to claim her rights in those same properties and the outcome is pending trial.

[15] The first defendant had also a lot to be concerned about after the deceased's death. The deceased's family had wanted the plaintiff to transfer the property 13A to them. She was worried. On 16 March 2005, she called the plaintiff and asked him to go to a lawyer's office to transfer the property back to her. The plaintiff did sign the transfer documents in the afternoon of the same day in the office of M/s KH Lim & Kong, advocates and solicitors. However, the events that led to the signing of the documents are disputed.

[16] The plaintiff's version is that he was harassed by the fifth defendant, who was the husband of the first defendant's sister, the third defendant. The fifth defendant then took him to Kompleks Mutiara, Jalan Ipoh where he was brought to the office of an advocate and solicitor, Mr Mark Foong, the sixth defendant. At this office, the first defendant and her two sisters, the third and fourth defendants, were already present. He was then told by the sixth defendant to sign the transfer documents as he was the trustee for the first defendant. He was told by the sixth defendant that if he refused, he would face serious problems. The plaintiff said that he felt pressured as all of them seemed angry. He said that he was pressured by all present except Mr Kong, the seventh defendant, who was also an advocate and solicitor. He felt confused as a result of being confined in the room in the lawyer's office and later felt afraid. He was afraid for his son who was working for the fifth defendant and also his wife and children who were residing at the 9B property. He said he signed with trembling hands. He also said that he had signed blank forms.

[17] After he had signed the documents, the fifth defendant sent him home. He then told Yong Mooi, the wife of the deceased, what had transpired by telephone. He also told the youngest son of the deceased. The next day, he followed all the family members of the deceased to M/s Paul Ong & Associates but Mr Paul Ong refused to act for them as he knew all the parties. He then went to the sixth defendant's office with the deceased's daughters to get some documents but failed to do so. He then went to Balai Polis Sentul and lodged a police report. Soon after, the family members of the deceased then took him to Tetuan Ainul Azam & Co, advocates and solicitors, who agreed to act for him.

[18] The defendants' version is that on that particular day, the first defendant had requested the fifth defendant to accompany and assist the plantiff to go to Mutiara Complex. In the afternoon, the plaintiff drove a small lorry to pick up the fifth defendant and they went together to Mutiara Complex. After parking the lorry in the basement, they went to the sixth defendant's office on the ninth floor. As he did not do conveyancing work, the sixth defendant recommended that they go to the seventh defendant's office on the third floor. The sixth defendant did not follow them.

[19] At the seventh defendant's office, the seventh defendant was told by the first defendant that the property 13A was held by the plaintiff on trust for her. She now wanted the said property to be transferred back to her. When asked by the seventh defendant, the plaintiff confirmed what the first defendant had said. As for the amount of consideration, the parties agreed to put the sum of RM180,000 as the stated consideration since that was the amount stated in the previous transfer.

[20] The plaintiff's particulars were then entered into the computer by Ms Kogulasri ('DW4'), a legal assistant in the firm. The completed Form 14A that came out from the computer was then signed by the plaintiff as transferor, by the third and fourth defendants, the directors of the second defendant, as transferee and by the seventh defendant as the witness. The seventh defendant claimed that throughout the whole process, the plaintiff was calm and knew fully well what he was doing and that there was no threat, pressure, confinement, harassment, duress or undue influence used by anyone to procure the signature of the plaintiff on the Form 14A. He denied that the plaintiff had signed a blank form as the completed form with the plaintiff's particulars was printed by the computer after the relevant particulars of the parties were keyed in by DW4.

[21] Arising from the factual matrix as aforesaid, the broad issues, to my mind, are firstly, whether the first defendant was holding the property 13A on trust for the deceased, and secondly, whether the plaintiff's signature on the Form 14A and other related documents was forced or induced by coercion or duress or undue influence, and thirdly, if the plaintiff had signed voluntarily, whether there is any other impediment rendering the said Form 14A unfit for registration.

Was the first defendant holding the property 13A on trust for the deceased?

[22] I think this is the pivotal question which needs to be addressed at the outset as all the other issues flowed from a determination of this question. The question is — at the time when the first defendant transferred the property to the plaintiff in 2005, was the first defendant holding the property in her own

right or was she holding the property on trust for the deceased? From the plaintiff, there was merely a bare assertion of what he claims the deceased told him. As against this are documents adduced by the defendants which provides evidence of the purchase. I have noted that although the first defendant says that she made money from her investments in Hong Kong, she was however unable to produce any evidence of her financial ability to purchase the property 13A as she claimed.

[23] However, the circumstances under which the property came to be transferred to the plaintiff were evidenced by documents leading to the first defendant obtaining a certificate to run her centre. She produced documentary evidence to show that the deceased had acknowledged payment of the deposit of RM25,000. There was also a letter dated 17 November 2000 from the deceased to M/s Paul Ong & Associates confirming that he had received the balance sum of RM225,000. A copy of the search of the master title shows that her name was registered as 1/36 owner. The plaintiff had also signed, at the same time, undated documents to transfer the property 13A back to the first defendant. In the face of such documentary evidence, the bare oral assertions of the plaintiff without anything more have to be rejected (see *Kim Guan & Co Sdn Bhd v Yong Nyee Fan & Sons Sdn Bhd* [1983] 2 MLJ 8 (PC)).

[24] If the first defendant was the beneficial owner, it would follow that she was then able to transfer the property on trust to the plaintiff for the reasons she had given. On the question of when a trust can be implied, the Supreme Court in *Geh Cheng Hooi & Ors v Equipment Dynamics Sdn Bhd and other appeals* [1991] 1 MLJ 293 held (at the headnotes):

> Although a trust should not normally be imported into a commercial relationship, yet in case such as those involved in these appeals the court could and should consider the facts to determine whether a fiduciary relationship existed. The court was satisfied and agreed with the trial judge that in the circumstances of these cases a trust can be implied even where the agreement themselves do not contain an express clause that the proceeds of sale would be held on trust, as it is clearly manifested in the agreements and the correspondence concerned that it was the intention of the parties that the Emporium or its outlets as licensors should, after deduction of the fees and commissions agreed to be paid to them, make over to the concessionaires or consignors all payments by third party customers.

[25] It would therefore appear that a trust can be implied even where the agreement themselves do not contain an express clause to that effect. In the instant case, there is compelling evidence that this was indeed the case. For these reasons, I considered that the first defendant was the beneficial owner of property 13A at the relevant time and that the plaintiff was holding the said property as trustee for her.

Was there coercion or undue influence in the signing of Form 14A?

[26] The law provides that agreements are valid only if they are made with the free consent of the parties (s 10 of the Contracts Act 1950). Section 14 of the Contracts Act 1950 provides that contracts are not free if they are caused by coercion, undue influence, fraud, misrepresentation or mistake. Coercion is also defined as the committing, or threatening to commit any act forbidden by the Penal Code, or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement (s 15 of the Contracts Act 1950). In *Perlis Plantations Bhd v Mohammad Abdullah Ang & another case* [1988] 2 CLJ (Rep) 134, VC George J (as he then was) in considering whether a contract entered into as a result of economic coercion could be avoided took the position that 'our Contracts Act does not provide for any form of coercion other than as defined by s 15 ' (at p 140).

[27] Undue influence occurs where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other (s 16 of the Contracts Act 1950). A person is presumed to dominate the will of another if he has real or apparent authority over the other or if he stands in a fiduciary relation to the other, for example a solicitor and client (s 16(2) of the Contracts Act 1950). If the contract appears to be unconscionable, then the burden of proving the contract was not induced by undue influence is on the person who is in a position to dominate the will of the other (s 16(3) of the Contracts Act 1950).

[28] So in the instant case — was there coercion or undue influence as defined by the law? It is the case of the plaintiff that the first, third, fourth, fifth and sixth defendants had confined and harassed him to sign the Form 14A. In his evidence, the plaintiff said that he was surrounded by the defendants. However, he did admit that he made no attempt to walk away and probably could have done so if he wanted. He even conceded that no one had ever threatened to use force on him. Even going by his version of the events, the plaintiff has failed to show the act or threatened act which violates the Penal Code. His allegation of coercion must therefore fail.

[29] As for his claim of undue influence by the sixth defendant, it was the evidence of the plaintiff that he was meeting the sixth defendant for the first time. If at all the sixth defendant was acting for anyone, it must been the first defendant rather than the plaintiff. Eventually when they went to the seventh defendant's office, the sixth defendant was not there as confirmed by the seventh defendant. The seventh defendant explained the purpose of the documents to the plaintiff who understood what was going on. I accepted the

testimony of the seventh defendant in this regard as I considered he would not risk jeopardising his career to assist the first defendant, whom he had just met, to commit any wrongful act. He had every reason to maintain the highest possible standards as he had a successful and thriving conveyancing practice.

[30] The plaintiff also could not have been under any misapprehension of what was going on as he knew, by his own admission, that he was holding the property on trust and that he had to return it one day when requested to do so. I therefore fail to see how there could have been undue influence on the plaintiff in this case. The plaintiff may have lodged a police report after the incident but I considered that he did so not as a result of any real personal grievance but to placate the family members of the deceased.

[31] But still one question remains — why would he sign the all important Form 14A if he thought that he was holding it on trust for the deceased's family? Now the plaintiff admitted that he was not the beneficial owner but a trustee of property 13A. I think that he signed Form 14A not because of any coercion or undue influence but because he was persuaded by the defendants that the property rightly belonged to the first defendant. He would certainly remember the blank documents he signed to transfer the property back to the first defendant at the time when the said property was being transferred to him. He would certainly know the circumstances under which he came to be the owner of the building together with being a director and shareholder of Born Free Centre Sdn Bhd which company was run by the first defendant. It was only when he was confronted by the deceased's family that he must have had a change of heart. He even admitted that he brought this action on the instigation of the deceased's family. His claim now seems very much as an afterthought influenced by the deceased's family.

Was the Form 14A unfit for registration?

[32] The plaintiff contends that the Form 14A is a sham document and is therefore unfit for registration. Essentially what the plaintiff is arguing is that the Form 14A is not fit for registration because the true nature of the transaction was not disclosed. The true nature of the transaction was that the property was being transferred in keeping with the trust arrangements between the first defendant and the plaintiff. Instead what was stated in Form 14A was that a consideration of RM180,000 was paid when it was not the case.

[33] In this regard, s 301 of the National Land Code ('NLC') is relevant as it sets out the conditions that need to be satisfied before registration can take place. The plaintiff contends that the contents of the Form itself violate s 301(b)(ii) and (c) of the NLC.

[34] For convenience, s 301 of the NLC is reproduced as follows:

> 301 When an instrument is fit for registration
>
> An instrument shall be fit for registration under this part if, but only if, the following conditions are satisfied —
>
> (a) that it is one of the classes of instrument set out in subsection (1) of section 292 as authorized to be so registered;
>
> (b) that it complies with —
>
> (i) the provisions of Part Thirteen as to the form, content, execution, execution and attestation of instruments of dealing generally, and the persons and bodies capable of taking thereunder, and
>
> (ii) the provisions of Parts Fourteen to Seventeen with respect to instruments of the particular class in question;
>
> (c) that the dealing which it effects is not contrary to any prohibition or limitation imposed by this Act or any other written law for the time being in force, or to any restriction in interest to which the land in question is for the time being subject;
>
> (d) That it does not declare or, except as permitted by section 344, disclose the existence of any trust; and
>
> (e) that it is duly stamped in accordance with the provisions of the Stamp Ordinance 1949:
>
> Provided that where a certificate of sale has been given to a purchaser in respect of any charged land or lease under subsection (3) of section 259 or subsection (4) of section 265, any requirement to obtain the consent of the State Authority relating to the restriction in interest to such land or lease in question shall not be applicable.

[35] Now when the property 13A was being transferred from the first defendant to the plaintiff, the parties could have resorted to s 344 of the NLC to transfer the property on trust and for the registration to reflect the status of the plaintiff as trustee by depositing the trust instrument. But the parties did not do that. I pause to note that if learned counsel for the plaintiff's contention is right, then his own argument of the invalidity of the Form 14A would apply equally to the original transfer with the effect that that transfer is invalid. The position that obtains then is that the property remains with the first defendant. So in a manner of speaking, the argument of the plaintiff perishes by his own sword.

[36] In any case, the evidence disclosed that the seventh defendant had advised the parties in this transaction that for registration to take place, the disclosure of any trust was not permitted unless it followed s 344 of the NLC. The form could not state 'no consideration' or 'consideration for love and

affection' for obvious reasons. The only recourse, according to the seventh defendant, was to state an amount of consideration which was accepted by the parties. Now would this invalidate the Form 14A to the point where it became unfit for registration?

[37] I think the answer to this question must lie in the scrutiny of the provisions of the NLC and in particular s 301. The only hurdle, as I see it, is s 301(c) which provides that the dealing which it effects is not one which is prohibited by the NLC or any written law. It has not been pointed out how the dealing in question is prohibited by the NLC or any written law. The only other issue of concern would be whether the document has been stamped in accordance with the Stamp Act 1949 as set out in s 301(d) (the Stamp Ordinance 1949 is now known as the Stamp Act 1949 (Act 378)). I think the main concern of the authorities here is to ensure that stamp duty is paid. It is essentially a revenue issue.

[38] In this regard, the defendants have argued that by stating the consideration as money consideration of RM180,000 instead of trust, the defendants had actually needlessly paid stamp duty twice when they could have avoided it. If that is indeed the case and it has not been argued to the contrary, there would be no impediment at all to the registration. Even assuming there is loss of revenue by the failure to pay the appropriate duty, which does not appear to be the case here, there are more than sufficient sanctions and remedies expressed in the law to enforce the same. It is noteworthy that the Stamp Act 1949 provides extensive sanctions for non-payment or evasion of stamp duty (see Part IX) as well as other provisions to enforce payment of the same (see s 50).

[39] In my view, given that it was the intention of the parties that the said property be transferred in the manner as stated in the Form 14A, and given that the law does not prohibit such an agreement, the land authorities must then give effect to such intention. Further, once it was ascertained that stamp duty was paid, there was no further duty on the part of the land authorities to conduct an inquiry to establish whether, according to the arrangement between the parties, the appropriate duty has been paid. The burden is on the parties themselves to ensure that it is done as otherwise the sanctions and the penalties that I have alluded to earlier would apply. For the aforesaid reasons, I would conclude that the Form 14A was an instrument fit for registration.

[40] Now that should effectively settle the issues appearing before the court. However, there is one other related issue which was canvassed at length by learned counsel for the plaintiff and for which I feel compelled to address. The issue is this. The plaintiff goes back to the transfer of the property by the first defendant to the plaintiff and contends rather peculiarly that the trust that is

being alleged there is unenforceable in any case. He relies on the Singapore Court of Appeal decision in *Suntoso Jacob v Kong Miao Ming* [1986] 2 MLJ 170, the Privy Council case of *Palaniappa Chettiar v Arunasalam Chettiar* [1962] MLJ 143 and the Court of Appeal decision in *Fusing Construction Sdn Bhd v EON Finance Bhd & Ors* [2000] 3 MLJ 95. These cases demonstrate the principle that where a transaction which is on the face of it is lawful is entered for an unlawful purpose or to achieve an unlawful end, the transaction is tainted with illegality, and is unenforceable.

[41] The plaintiff in the instant case is claiming that a deception has been practiced on the public administration because of the false picture painted of the transaction between the plaintiff and the first defendant. It was contended that the Ministry of Education was deceived by the first defendant in trying to portray the 13A property as belonging to the plaintiff, who was a bumiputra, so as to obtain the certificate to operate the English language centre. It was also contended that the land administrator was deceived because there was no such consideration of RM180,000 as stated in the memorandum of transfer. It was further contended that the Inland Revenue Board was deceived when stamp duty was paid on the sum of RM180,000 when in actual fact, no such monies were ever paid.

[42] The short answer to these contentions, apart from whatever has been stated before, is that, even assuming there was deception of the sort that the plaintiff is claiming, and the plaintiff is right to rely on the case authorities stated, it cannot be denied that the plaintiff was an equal participant in these transactions. If the plaintiff is now seeking the aid of the court for relief in equity to declare the trusts as unenforceable, he must come with clean hands to ask for equity in accord with the principle: 'No court will lend its aid to a man who founds his cause of action upon an immoral or illegal act' (*Holman v Johnson* (1775) 98 ER 1120 per Lord Mansfield). He cannot now expect the court to assist him.

[43] In any event, the defendants here are not relying or seeking to enforce any trust to defeat the plaintiff's claim. That is certainly not the foundation of their counterclaim either. Their position is that the signing of the Form 14A was done with the free will of the plaintiff and that whatever follows should be given its full effect. That is in fact the real issue in this action. As I had observed earlier, if the plaintiff is really seeking to strike down the trusts, the net result would be the first defendant being declared the beneficial owner. It is for this reason that I found the contentions of the plaintiff in this regard curious and unusual.

[44] In the final analysis, there is no serious injustice to the plaintiff or unconscionable gain or windfall on the part of the defendants as the plaintiff

himself admitted that he was a trustee of the 13A property and that it did not belong to him. The only parties who may feel aggrieved are perhaps the family members of the deceased but I suppose they will have to live with the fact that these matters have now come to a head because of the machinations of the deceased. In the circumstances, the plaintiff's claim on the 13A property must fail.

[45] Apart from this claim, there was a further claim by the plaintiff for the Putra or Puchong properties. Now these properties were the subject matter of Kuala Lumpur High Court Suit S4–22–1194 of 2005 for which the court has made an order. If the plaintiff considered that he had any interest in these properties, he should have applied to intervene and be a party. These matters are therefore res judicata as the issue of ownership was determined in that suit. It would now be an abuse of process to relitigate the same.

COUNTERCLAIM

[46] I come now to the counterclaim. The first claim is for the said Form 14A to be given effect and for the caveat entered by the plaintiff to be removed. In view of my findings in relation to the plaintiff's claim, the defendants are entitled to this claim.

[47] The second part of the claim in the counterclaim is a claim in defamation against the plaintiff by the first, third, fourth, fifth, sixth, and seventh defendants. This was quite a remarkable claim. The imputations that gave rise to this claim were all contained in an affidavit affirmed by the plaintiff on 12 August 2005 which affidavit was filed in court in respect of an application in the same file. However, no evidence was led in the trial in this regard and no submissions were made in respect of this claim. This claim was of course without any merit as the plaintiff was protected by absolute privilege. It is trite that no action lies against any party in a proceeding whether against judges, counsel, witnesses or parties for any words spoken in the ordinary course of any proceedings including evidence given, whether oral or written, relevant or irrelevant, malicious or not. Absolute privilege attaches to all court proceedings and provides complete immunity from liability regardless of the motives of the speaker or writer or the truthfulness of his or her evidence or statements (see s 11 of the Defamation Act 1957; *Halsbury's Laws of England* (4th Ed), vol 28 at para 98; *Gatley on Libel and Slander* (10th Ed), para 13.5 and *Coopers & Lybrand v Singapore Society of Accountants & Ors* [1988] 3 MLJ 134 at pp 136–137).

RESULT

[48] To sum up, the plaintiff's claim is dismissed with costs. The defendant's

counterclaim in para 1 is allowed. The plaintiff is hereby ordered to remove the caveat lodged and for the transfer to be effected by the authorities. The rest of the claims in the counterclaim are denied. There will be only one set of costs which the plaintiff will have to pay the defendants. After having heard the parties, I assessed the costs at RM40,000.

Plaintiff's claim dismissed and first part of defendants' counterclaim allowed with costs.

Reported by Kohila Nesan